

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESAL PRICE
LITIGATION

MDL No. 1456

Civil Action No. 01-CV-12257 PBS

THIS DOCUMENT RELATES TO:
TRACK 1 TRIAL

Judge Patti B. Saris

**THE JOHNSON & JOHNSON DEFENDANTS' REPLY IN FURTHER SUPPORT OF
DEFENDANTS' MOTION TO IMPLEMENT THE COURT'S NOVEMBER 1, 2007 ORDER
REGARDING THE ENTRY OF JUDGMENT PURSUANT TO FED. R. CIV. P. 54(b)**

Plaintiffs offer two objections to the proposed order as it relates to the J&J Defendants. Both objections are new. Neither objection was raised in response to the nearly identical Findings that were submitted earlier. (*See* Track 1 Defs.' Modified Proposed Form of J. Under Rule 54(b) (Sept. 14, 2007) (Dkt. 4714). Both objections should be rejected.

First, plaintiffs object to the passage stating that "no reasonable jury could find that the J&J Defendants' conduct violated the consumer protection laws applicable to the Class 1 claims." It is important to retain this passage in the Findings in order to explain to the First Circuit why the Court is entering judgment in favor of the J&J Defendants as to Class 1. In light of plaintiffs' concession that the J&J Defendants' subject drugs (Procrit® and Remicade®) never substantially exceeded the range of spreads plaintiffs themselves contend was generally expected by the industry and government, there remains no triable issue of fact as to Procrit® and Remicade® in connection with Class 1. The passage the J&J Defendants propose simply explains why a Class 1 jury trial against the J&J Defendants is not warranted.

Second,. plaintiffs say the Proposed Findings should state that the Court found that Ortho Biotech's conduct was "troubling," and that its determination as to Centocor was, in one respect, a "close call." Adding this language to the Findings would be superfluous. Paragraph 9 of the Proposed Findings expressly incorporates all of the previously-issued Findings of Fact and Conclusions of Law.

Dated: November 9, 2007

Respectfully submitted,

/s/ William F. Cavanaugh, Jr.

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Certificate of Service

I certify that a true and correct copy of the foregoing was served on all parties on
November 9, 2007 via LexisNexis File & Serve.

/s/ Andrew D. Schau

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